

Hyacinthus Pelly, *Appellant.*
Hugh Maddin, and
Katherine his Wife, } *Respondents.*

The STATE of
The Respondents CASE.

Jeffry Osbaldeston was seized and possessed of the Lands of Tully Carroward, Liffenerin, Coggallmore, Coggallbagg, Carokeele, and Derrinegonne, all lying in the County of Roscommon, and Kingdom of Ireland, long before the 23d Day of October, 1641, and for several Years after and before the Rebellion of 1641, in consideration of a Marriage to be had between him and Martha Boyle, Daughter to the then Archbishop of Tuam, and of a considerable Portion, did settle the said Lands, among others, to the Use of himself for Life, remainder to the said Martha for Life for her Jointure, remainder to the Heirs of their Two Bodies to be begotten, the Remainder to his own right Heirs, and died in England in the Year 1644, without Issue; and the said Lands, by Vertue of the said Settlement, remained to the said Martha for Life; and the Reversion in Fee descended to John Osbaldeston, Brother and Heir of the said Jeffry. The said Martha, some time after the Death of the said Jeffry, married Colonel Nelson, of the Usurpers Army, who in her Right enjoyed the said Lands till his Death; after which, the said Martha married Sir Matthew Deane, who also in her Right enjoyed the said Lands until she died, in the Month of November, 1702.

The said Jeffry Osbaldeston, Colonel Nelson, and the said Martha, having been Protestants, and not concerned in the said Irish Rebellion of 1641, the said Lands were never seized or sequestred by the then Usurped Powers.

That after the Restauration, in the Year 1663, Commissioners being appointed, pursuant to the Irish Act of Settlement, to hear the Claims of Persons Innocent of the said Rebellion in 1641, the said John Osbaldeston claimed, as an Innocent, several Lands that he was entitled to, and that had been seized and sequestred, and was decreed Innocent; but did not claim the said Remainder, the same having not been seized or sequestred: And he being advised not to claim the said Remainder, for that if he should, it would make them liable to Quit-Rent; That upon hearing the said Claim before the said Commissioners, the Marriage-Settlement of the said Jeffry Osbaldeston was proved, and the said Jeffry decreed an Innocent Protestant, and the said John an Innocent Papist; *prout* the Decree read and exhibited in the Cause.

The said John Osbaldeston having but one only Daughter, Mary Osbaldeston, did enter into Articles, bearing Date the 18th Day of September 1703. with Peter Pelly, of the City of Dublin, Gent. concerning a Marriage to be had between the said Peter and the said Mary; by which Articles the said John covenanted, in consideration of the said intended Marriage, &c. to settle the said Remainder on the said Peter and Mary, and the Heirs-Males of their Bodies to be begotten, Remainder to the Heirs Female of their Bodies to be begotten, until such time as such Heirs Female should be paid the Sum of 800*l.* and from and after such Payment, to the right Heirs of the said John: And the said Peter perfected a Bond of 1000*l.* to the said John for performing the said Articles. And the said Peter, together with Two other responsible Persons, did before the said Marriage perfect a Penal Bond of 400*l.* conditioned to lay out 200*l.* in a Purchase or Mortgage to the Use of the said Marriage, as by the said Articles and Bonds, proved in this Cause, may appear.

The said Marriage took effect, and soon after the said John Osbaldeston died without any other Issue, whereby the said Remainder came to the said Mary, as sole Daughter and Heir of the said John Osbaldeston; and the said Peter, in Right of the said Mary, possessed himself of Goods and Chattels of the said John to a considerable Value; and soon after the said Mary died, leaving Issue by the said Peter Two Daughters, the Respondent Katherine, and Mary Pelly who died Young, and unmarried; so that the remainder of the said Lands came entirely to the Respondent Katherine.

In the Year 1676, (the said Katherine and Mary being then Minors, and under the sole Care and Tuition of the said Peter Pelly, their Father,) Commissioners were appointed, pursuant to the said Act of Settlement, for Hearing and Determining the Claims of Transplanted Persons into Connaught and Clare; and the said Peter Pelly being desirous to have the Sanction of Certificates and Letters-Patents under the said Act for the Title of the said Lands, and having some Deficiencies of Transplanted Interests, did, the better to secure the said Title, desire Liberty from the said Commissioners to place the same on the said Lands, as upon Lands by himself brought into the Stock; which was readily granted to him, as well as to many others that desired the like, because such Proceedings did ease the Stock of Reprisals, which was so short, that such Deficiencies were of little value. But the said Martha being then Widow of the said Colonel Nelson, and in actual Possession of the said Lands as her Jointure, with Remainder over to the Respondent Katherine and her said Sister Mary, both then Minors, she the said Martha threatened to oppose the said Peter Pelly's passing the said Lands as aforesaid: Whereupon the said Peter assured her, That what he did was only intended to strengthen the Title of his said Daughters, and that he would give the said Martha a Saving in the said Patent for her Jointure: Upon which the said Martha gave him no Opposition, but lent him several Deeds and Writings relating to the Title of the said Lands; and the said Peter ordered one Hugh Kelly, his Attorney, to proceed in passing the said Certificate and Patent; but the said Kelly refused to be concerned therein, and said he would oppose him, unless the said Peter would give him a Declaration under Hand and Seal, That the said Patent should be in Trust for his said Daughters Katherine and Mary, who by their Mother were the said Hugh Kelly's near Relations; and accordingly the said Peter Pelly gave a Declaration of Trust in Writing to that Effect, under Hand and Seal, to the said Hugh Kelly, as appears by Proof in the Cause; but the said Kelly being killed in the late Rebellion in Ireland, the said Writing was lost; and the said Peter Pelly several times, before and after the passing the said Patent, declared the same to be in Trust for his said Daughters, in the Presence of several Persons examined in the Cause.

Some short time after passing the said Patent, the Farmers of Quit-Rent in Ireland finding that the said Lands were so passed in Patent, distrained the said Lands in the Possession of the said Martha; who thereupon applied to the said Peter Pelly, alledging, That he had brought that Charge and Trouble upon her, and requiring him to save her Jointure from Quit-Rent: Whereupon the said Peter preferred a Petition to the Commissioners of the Revenue in the said Kingdom, setting forth, That the said Lands were not liable to Quit-Rent, as never having been forfeited, nor seized or sequestred, for that the same were Protestant Interest, being the Estate of Jeffry Osbaldeston before and after the 23d of October 1641. and after his Death, the Jointure of Martha his Wife, who was also a Protestant, as by the Copy of the said Petition, all the said Peter Pelly's Hand-writing, and proved and read in the first hearing of the said Cause, may appear.

And soon after the said Peter married one Ursula Lally, without any Portion other than a Third part of 200*l.* by whom he had Issue the Appellant Hyacinthus Pelly; and in the Year 1690, or 1691, the said Peter Pelly died, possessed of a Personal Estate worth 1200*l.* and seized of a Real Estate worth 100*l.* per Annum, all which came to the Appellant Hyacinthus Pelly.

Afterwards, in the Year 1693, the Respondent Hugh Maddin, by Consent of the said Ursula, married the said Katherine, being advised that she had a Right to the Remainder of the said Lands after the Death of the said Martha.

That immediately after the Death of the said Martha, in 1702, the Respondent Hugh got quiet and peaceable Possession of the said Lands, in Right of the Respondent Katherine; but the Appellant tampering with the Tenants, prevailed with some of them not to pay their Rents to the Respondents, and began a Law-Suit with the Respondents and several others concerning the said Lands, so that the Respondents were forced to commence a Suit in the Chancery of the Exchequer in Ireland against the Appellant, as well to quiet the Respondents in their Possession, as to compel the Appellant to execute the said Trust, in regard the said Peter Pelly, at the time of passing the said Patent, was Father and Guardian to the said Minors, and had got from the said Martha the Deeds relating to the Title of the Lands upon Trust, to secure the Title for them, and had no Pretence thereunto, but by the Articles of Inter-marriage under the Title of the said John Osbaldeston, the Respondent Katherine's Grandfather; and being bound by Bond, as aforesaid, to lay out 200*l.* in a Purchase or Mortgage for the Benefit of his said Daughters, which was much more than the Charge of passing the said Certificate and Patent amounted to: Therefore all that he did for securing the Title of the said Lands, ought to be construed and adjudged in Trust for his said Daughters, in as much as he promised the said Martha to secure it for them, and that it would be a Breach of Trust in him to set up any Title in himself in Prejudice to theirs; the said Cause coming to a Hearing, the late Lord Chief Baron Donnellane was of Opinion, for the clearer Decision of the Matter, that it ought to be tried by a Jury, Whether the said Peter Pelly did make any express Declaration of a Trust; and an Issue was directed to be tried by a Jury of the County of Galway at the Exchequer Bar upon this Issue, (*viz.*) Whether Peter Pelly did at any time, and when, declare, That the Patent in the Pleadings mentioned should be in Trust for his Daughters by Osbaldeston, or to strengthen their Title: That at the said first Hearing, as well as at the said Trial at Bar, the said Petition of Peter Pelly, (setting forth, That the said Lands were the Estate of Jeffry Osbaldeston a Protestant, never seized or sequestred) was read, and given in Evidence; but by the obstinacy of one Man, the said Jury did not give any Verdict, wherefore the Court ordered a Juror to be withdrawn: After which the Respondents petitioned for a Re-hearing, which was granted; and the Cause being solemnly argued by several Council of each Side in Easter Term, 1705, and these Respondents Council insisting upon the Resulting Trust arising from the Nature and Circumstances of the Case, as well as on the positive Proofs of an express Trust, the Cause was kept under Advise of the Court from that time till Hilary Term following, at which time there was a Decree pronounced for the Respondents.

The Appellant Pelly then Petitioned for a Re-hearing to be had on the 2d Day of Michaelmas Term last; and the Respondents, by their Council, pressed on the said Re-hearing, and expected that the Appellant would have proceeded therein; and the rather, that the present Lord Chief Baron Freeman, who never heard the said Cause, then sat on the Bench; but the Appellant withdrew his Re-hearing, and now brings his Appeal into the House of Lords in England, in hopes to tire out the Respondents with Expence and Charges, the said Law Suit having already cost the Respondents more than the value of the said Lands.